COUNCIL AGENDA: 2-4-14
ITEM: 2.8

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: **Nineteenth Amendment to Agreement for Legal Services related to the Airport with Orrick Herrington & Sutcliffe LLP**

DATE: January 23, 2014

RECOMMENDATION

Adopt a resolution authorizing the City Attorney to negotiate and execute a Nineteenth Amendment to the agreement with Orrick Herrington & Sutcliffe LLP for legal services related to the City's outstanding Airport revenue debt to increase the compensation by $75,000 for a total compensation not to exceed $735,000.

OUTCOME

Approval of the Nineteenth Amendment will increase the compensation payable to Orrick Herrington & Sutcliffe LLP for legal services related to the City's outstanding Airport revenue debt.

BACKGROUND

On September 12, 2001, the City entered into an agreement for legal services with Orrick Herrington & Sutcliffe LLP ("Orrick"), in an amount not to exceed $50,000, and with an initial term to expire on June 30, 2002. Under this agreement, which has been extended annually since 2001, Orrick has provided legal and technical advice on issues related to financing improvements at the Norman Y. Mineta San José International Airport as well as issues involving the City's outstanding Airport revenue debt, as requested by the City Attorney.

This agreement has since been amended to increase total compensation to an amount not to exceed $660,000, with the current term to expire on June 30, 2014.

ANALYSIS

For a number of years, Orrick has provided legal services regarding methods to finance Airport improvements as well as advice concerning the City's outstanding Airport revenue

bonds and the Airport's subordinated commercial paper program (the "Airport CP Program"). The City Attorney's Office has retained Orrick due to the firm's breadth of experience in the area of municipal finance generally and the City's Airport revenue debt specifically. Orrick's services generally have involved advice regarding federal income tax issues, revisions to the CP Program and the expansion of the Airport CP Program in response to the disruption in the variable rate municipal bond market in 2008. Orrick has provided these services on a time and materials basis and the firm is paid from Airport operating funds. Orrick's fees for services related to the issuance of Airport revenue bonds have been paid from those bonds.

During fiscal years 2008 through 2012, the City required a significant level of service from Orrick due to disruption in the bond market and the need to negotiate agreements with banks providing letters of credit to support the Airport CP program. The City required a reduced level of service last fiscal year and as a result, for the current agreement, the total compensation was not increased when the agreement's term was extended.

In the fall 2013, City staff commenced negotiations with Barclays Bank PLC ("Barclays") to provide a letter of credit for support of the Airport CP Program. This transaction has required a significant level of services from Orrick, including preparation of the Third Amended and Restated Issuing and Paying Agent Agreement, analysis and advice regarding IRS tax regulations and assistance in the review and negotiation of the Letter of Credit and Reimbursement Agreement with Barclays. Additional compensation is required for the completion of these services as well as to provide funds in the event the City needs Orrick's advice to address other issues that may come up during the remainder of the fiscal year. Accordingly, this Office is requesting an increase of compensation in the amount of $75,000 for a total compensation of $735,000. The current agreement will expire on June 30, 2014, and no extension of term is requested at this time.

In 2013, this Office issued a request for qualifications to establish a pool of qualified bond counsel for services related to airport revenue bonds. Orrick was one of five firms that qualified. In light of Orrick's experience with the City's Airport CP Program and the relatively compressed time line to obtain a new letter of credit provider, we determined to use Orrick as the bond counsel for this transaction.

PUBLIC OUTREACH/INTEREST

This memo is posted on the City's website for the February 4, 2014 Council Agenda.

COORDINATION

This item has been coordinated with the Airport Department.

BUDGET REFERENCE

Fund #	Appn #	Appn. Name	RC #	Total Appn	Amt. for Contract	2012-2013 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
523	0802	Airport Non-Personal/ Equipment	105110	$31, 194,408	$0	XI-3	06/18/13 Ord # 29271

CEQA

Not a Project; PP10-066(e), services that involve no physical changes to the environment.

RICHARD DOYLE
City Attorney

By _____
Danielle Kenealey
Chief Deputy City Attorney

cc: Ed Shikada
Kim Becker Aguirre
Julia H. Cooper

For questions please contact DANIELLE KENEALEY, Chief Deputy City Attorney, at (408) 535-1900